

PART VII: Remedies and Penalties

§3551. Unconscionability

With respect to a consumer credit transaction, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at any time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an agreement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this state or the United States or any subdivision of either is not unconscionable.

§3552. Effect of violations on rights of parties

A. Violations discovered as a result of written consumer complaint

(1) Intentional violations or violations not caused by good faith errors.

(a) If the court finds that the extender of credit has intentionally or as a result of error not in good faith violated the provisions of this chapter, the consumer is entitled to a refund of all loan finance charges or credit service charges and has the right to recover three times the amount of such loan finance charge or credit service charge together with reasonable attorney's fees. The right to recover the civil penalty under this subsection accrues only after

(i) written notice is given to the extender of credit by certified mail addressed to the extender of credit's place of business in which the consumer credit transaction arose;

(ii) a copy of such notice is mailed to the extender of credit's agent for service of process; and

(iii) thirty days have elapsed since receipt of such notice by the extender of credit, and the violation has not been corrected.

(b) Except as otherwise provided herein, if the notices provided for in Subsection A(1)(a) of this section have been given by the consumer, the following acts by the extender of credit shall be presumed to be an intentional violation or a violation not resulting from good faith error:

(i) Failure to return or give credit for an overcharge in the loan finance charge or credit service charge or, failure to return a deficiency in the rebate within the time period set forth in Subsection A(1)(a)(iii) of this section when such overcharge or deficiency exceeds the greater of (1) ten percent of such loan finance charge, credit service charge or rebate; or (2) fifteen dollars.

(c) If the extender of credit fails to return or give credit for an overcharge or deficiency as provided in Subsection A(1)(b) of this section, in addition to the penalties in Subsection A(1)(a) of this section, the consumer executing the consumer credit transaction and giving the required notices shall be entitled to collect from the extender of credit up to one

hundred dollars of his actual documented out-of-pocket expenses incurred as a direct result of such failure to act.

(d) In the case of multiple violations involving an overcharge in the loan finance charge, credit service charge or rebate of the size described in Subsection A(1)(b)(i) of this section, the extender of credit must notify the commissioner of the existence of such multiple violation and must give the commissioner a reasonable description of such multiple violation within thirty days after the receipt of the written notice from the complaining consumer, and the extender of credit must correct such multiple violation as to each consumer affected thereby within thirty days of the receipt of the written notice from the complaining consumer. Upon good cause shown, the commissioner may grant up to two thirty day extensions within which the extender of credit must correct the violation. If the extender of credit fails to give the commissioner the required notice or fails to correct such multiple violation as required herein, then from such failure it shall be presumed that such multiple violation was intentional or not in good faith.

(2) Unintentional violations or violations caused by good faith errors.

(a) If a violation of this chapter is not intentional or is made in good faith on the part of the extender of credit the court may require the extender of credit to correct the violation, but the consumer is not entitled to the civil remedies granted by this section; provided however the provisions hereof shall not protect the extender of credit if the provisions of Subsections A(1)(b) and A(1)(d) of this section are applicable.

(b) If the complaining consumer gives the extender of credit written notice as provided in Subsections A(1)(a)(i) and A(1)(a)(ii) of this section of an alleged violation of the provisions of this chapter, although such violation was unintentional or resulted from good faith error or did not in fact exist, the extender of credit must give the complaining consumer a reasonable response to the complaint in writing within thirty days of the receipt of written notice from the complaining consumer. If the extender of credit fails to give such response timely, the complaining consumer shall be entitled to collect from the extender of credit up to one hundred dollars of his actual documented out-of-pocket expenses incurred as a direct result of the failure of the extender of credit to comply with the provisions hereof.

B. Self-discovered violations

(1) An extender of credit has no liability for the civil remedies granted by this section in all instances other than multiple violations and whether intentional or resulting from good faith error or not, if: (a) within fifteen days after discovering a violation and prior to receipt of written notice of such violation from a consumer, or (b) within fifteen days after the occurrence of such violation, regardless of receipt of such notice from a consumer, the extender of credit gives written notice to the consumer or his designated agent of the violation and corrects the violation. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the violation is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(2) In the case of all self discovered multiple violations whether intentional or resulting from good faith error or not, the extender of credit shall have no liability for the civil remedies granted by this section if: (a) within fifteen days after discovering such violations the commissioner is notified of the existence of such multiple violation and given a

reasonable description thereof, and (b) such violations are corrected as to each consumer affected thereby within thirty days after discovering such violations. Upon good cause shown the commissioner may grant up to two thirty day extensions within which the extender of credit may correct the violation. If a consumer delivers written notice of such violation at any time after the commissioner is notified by the extender of credit, it shall not affect the rights of the extender of credit to be relieved of liability as provided herein.

C. No act done or omitted in conformity with any advisory opinion or interpretation issued by the office of financial institutions at the time of the act or omission or subsequent to the act or omission shall constitute a violation of this Chapter, notwithstanding that after such act or omission has occurred, such advisory opinion or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Advisory opinions and interpretations of the office of financial institutions shall not be considered rules requiring compliance with the rulemaking process of the Louisiana Administrative Procedure Act. The commissioner and the employees of the office of financial institutions shall have no liability to any person with respect to an advisory opinion or interpretation issued in connection with this Chapter.

D. Except as otherwise provided herein, any written notice required in this section may be mailed by registered, certified, first class, or air mail at the sender's option. Proof of receipt by the extender of credit may consist of a return receipt executed by an employee of the extender of credit. Proof of receipt by the consumer may be a return receipt executed by the consumer. Proof of mailing any written notice may be a postmarked registered mail receipt, a postmarked certified mail receipt, or a post office certificate of mailing. The written notice shall identify the contract, state the names of the extender of credit and the consumer, and shall include the date and a reasonable description of the violation. In any case where the extender of credit must respond in writing to a complaining consumer, the written notice or other required written response shall be mailed to the last address contained in the extender of credit's file on that consumer, unless the consumer specifies a different address in his written notice sent to the extender of credit.

E. Any civil action under this section must be brought within sixty days of final payment of the consumer credit contract, or in the case of a revolving loan or revolving charge account, within one year of the date of the violation.

F. Definitions of terms used in this section:

(1) The term "civil remedies" as used herein shall include civil penalties, attorney's fees and out-of-pocket expenses.

(2) The term "good faith error" as used herein shall include errors of law as well as errors of fact.

(3) The term "multiple violation" as used herein means a violation which has recurred more than one hundred times as a result of a common error.

G. Attorney fees shall be measured by the time reasonably expended by the consumer's attorney and not by the amount of recovery.

§3553. Criminal penalties

A. (1) An extender of credit and any individual directly involved in the extension of credit who willfully makes charges in excess of those permitted by the provisions of this chapter is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than two hundred fifty dollars or more than five thousand dollars, or to imprisonment not exceeding one year, or both.

(2) A person, other than a supervised financial organization, who willfully engages in the business of making or taking assignments of consumer loans without a license in violation of the provisions of this Chapter applying to authority to make consumer loans is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than two hundred fifty dollars nor more than five thousand dollars, or to imprisonment not exceeding one year, or both.

(3) A person who willfully engages in the business of making consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Chapter concerning notification (R.S. 9:3563-3565), is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars, or to imprisonment not exceeding four months, or both.

(4) A person who willfully engages in the business of consumer loan brokering without complying with the provisions of this Chapter concerning registration (R.S. 9:3572.1 et seq.) is guilty of a misdemeanor, and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars, or to imprisonment not exceeding one year, or both.

B. When the extender of credit is a corporation, its officers, directors or stockholders who are not personally involved in violations of this chapter, shall not be subject to the criminal penalties of this Section.